

**TOWN OF NEWFIELDS BOARD OF SELECTMAN
MEETING MINUTES
TUESDAY, MARCH 29, 2011**

Present: Selectman: Michael Woodworth and Tom Hayward. Others present included: Nick Sciullo, Chief Art Reed, Larry Shaw, Alison Watts, Natalie Fream and Sue McKinnon.

Call to order at 5:12 pm.

The Selectman reviewed and signed:

- Checks
- Report of Appropriations – Actually Voted – MS2
- NHRS Letter
- Notice of Intent to Cut Wood (104-54)

Nick Sciullo, representing Go Rail, met with the Selectman to make them aware of the impact larger and heavier trucks would have on the national highways, but especially on local town roads and bridges. He wanted the support of local governments, through Go Rail draft letters, to share in the opposition of Bills before Congress to increase the size of trucks. The Selectman would consider supporting this issue.

The Selectman met with Chief Art Reed to discuss:

- Status of the Dispatch move to Rockingham County
- Alarm System Ordinance
- Alcohol and Speeding Grants
- Tree Cutting Ordinance
- Code Enforcement Officer - C.O.

Alison Watts met with the Board to discuss the Southeast Watershed Alliance. The Alliance can assist small towns in dealing with watershed impairment regulatory process driven by the Federal EPA. These stringent permits will effect nitrogen levels in the Great Bay & Squamscott River and the upgrading of waste water treatment plants and storm water run-off. Proactive watersheds with programs on lawn care to educate public on use of fertilizers and a storm water ordinance in place would be helpful. Alison will keep the Board informed on any updates.

The Selectman met with Larry Shaw, Building Inspector, on the Fee Schedule Minimums. Larry will check with Exeter and Newmarket on their fee schedules. The Board will be updated by Larry at the Selectman's Meeting on April 12, 2011.

Natalie Fream, Main Street Art, spoke with the Board about a Temporary Art Exhibit in Badger Park. The Project: Doors to Art would open May 27, 2011 during the Memorial Day Celebration till August 27, 2011. The Board suggested:

- Possible sponsor for the event – Parade Committee
- Check with Chief Reed, Garden Club, Landscaping, Celebration Committee and Neighbors for any concerns

- Selectman to review Rules pertaining to Town Hall Rental, Clean-Up Policy and possible check for deposit and contact Amy Sununu, Parade Committee.
- Reschedule for Selectman's Meeting – April 12, 2011.

Natalie Fream also met with the Selectman about the upcoming 13th Annual 5 K Road Race to be held on June 25, 2011. The concerns of the Board were:

- Insurance certificate by June 20, 2011
- Police Coverage
- Music – check noise ordinance
- Neighbors concerns

Natalie will keep the Board updated.

Sue McKinnon spoke to the Board about a potential tax deeding in May. The homeowners began receiving the Elderly Exemption in 2010, but the full tax amounts are still outstanding for 2008 and 2009. Sue would like to meet with them to set up a payment plan and report back to the Board.

The Board of Selectman reviewed and signed the Motion for Rehearing, Case # 11-2-23-1, on the Cedar Island Ledge Property Management LLC (202-8.23). The Zoning Board of Adjustment will hold a public meeting on Wednesday, March 30, 2011 at 7 PM to consider a submitted motion for rehearing. This meeting is not a hearing; no testimony will be taken from applicant, petitioner or abutters.

The Board put the decision concerning the relocation of the new flag pole on hold since more information is needed.

Sue McKinnon brought the need for a tree cutting ordinance to the attention of the Board. Information and drafting of ordinance will be given to Board for review.

Minutes of the March 15th meeting were read and amended by Michael, and accepted and seconded by Tom. All were in favor and the motion carried.

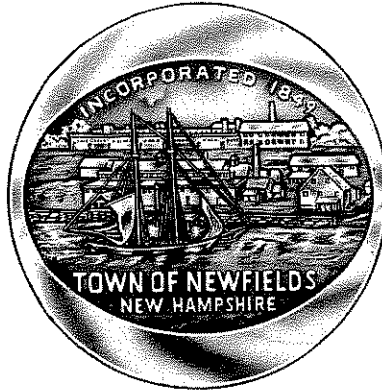
At 7:40 pm, Tom made a motion to adjourn the meeting. The motion was seconded by Michael. The motion passed with all in favor.

Respectfully submitted,

Donna C. Newman
Deputy Town Clerk

Town of Newfields

phone 603-772-5070



Newfields, New Hampshire

03856

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www.newfieldsnh.gov

Zoning Board of Adjustment
Town of Newfields
Town Hall - Main Street
Newfields NH 03856

MAR 23 2011

Motion for Rehearing

Case # 11-2-23-1

Cedar Island Ledge Property Management LLC

Tax Map/Lot 202-8.23

NOW COMES the Newfields Board of Selectmen and submits this motion for rehearing in the matter of Case # 11-2-23-1 (See attached minutes and Record of Decision of Newfields Zoning Board of Adjustment). The Board of Selectmen ("Board") make this appeal in accordance with RSA 677:2. The Board has standing in accordance with the specific language of the statute.

The Board respectfully submits that the decision of the Zoning Board of Adjustment ("ZBA") was unlawful or unreasonable due to the failure to receive and properly consider all relevant evidence and information with respect to the subject variance to Sections 10.2.2.2.2.1(A) and 10.2.2.2.2.2(B), wherein this variance was issued based on the testimony of the applicant that Test Pit 3 satisfies the local ordinance for depth of natural soil. During the hearing on this matter the applicant submitted their own evidence as to the compliance of the test pit in question. Absent from the record were the contemporaneous findings of the Rockingham Conservation District regarding the test pit, which was provided at the time of the test pit's original review made on behalf of the town. This finding stated that the test pit did not satisfy the local ordinances (see attached 22 November 2004 report of Cuomo and 2 March 2011 memo of Cuomo and Smith – both attached and incorporated herein as part of this motion for rehearing). Without a proper consideration of this contrary information and a decision that addresses this information, we believe that the ZBA was unable to properly and fully consider the facts of the matter and thus was unable to lawfully and reasonably grant the variance.

We have reviewed the letter to the ZBA from the applicant (attached Memo of Morrill March 9, 2011) and feel that this should also be considered with respect to the information regarding the

status of the test pit but that the ZBA must hold a formal hearing to properly consider this information and evidence and fully develop the record so that a reasonable and lawful variance decision may be issued.

Accordingly, this Board requests that the ZBA grant this motion for rehearing in the above referenced matter and grant a new hearing on the matter.

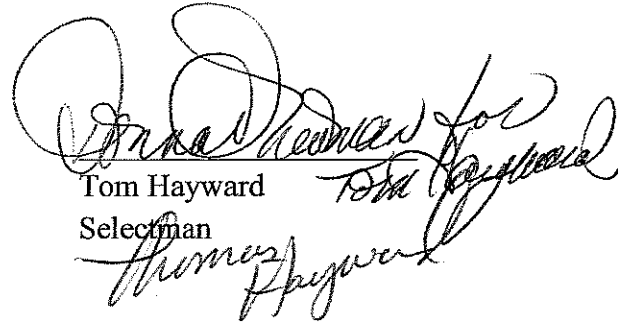
By our hand:



Michael Woodworth
Selectman

Wes Moore
Selectman

March 23, 2011



Tom Hayward
Selectman

- ☐ ZBA copy ☐ Building Inspector Copy ☐ Applicant/Agent copy ☐ Owner copy
☐ Town Counsel copy ☐ Town Selectmen copy ☐ Planning Board copy
☐ Town Planner copy ☐ Other party copy _____

NOTICE OF DECISION: February 23, 2011

Town of Newfields Zoning Board of Adjustment: Case #11-2-23-1

A public hearing was held for this case on Wed., Feb. 23, 2011, at 7:00 p.m., at the Newfields Town Hall.

Present: Mary August, Chmn; Jed Rumford; Kent Lawrence; Dave Sweet; Steve Coes.

ZBA Alternate Cathy Nelson-Smith took minutes.

Also present: Applicant Kyle Engle of Cedar Island Ledge Property Management; Wayne Morrill of Jones & Beach Engineers; Abutter Mr. Mastropietro.

Mr. Engle stated they seek Variance from Town Ordinances regarding Test Pits and Natural Soil Depth to Seasonal High Water Table (SHWT): Article 10.2.2.2.1 (A) and Article 10.2.2.2.2 (B)

The property referenced is located in the Commercial District, identified as tax map 202, lot 8.23, the southerly side of Rte. 85 at junction of Rte. 108.

The proposed use on this lot is a 3,630' office/retail bldg. and applicant is not trying to subdivide. This parcel is a unique lot in that it is bisected by the relocation of the Rte 85 by State DOT. There already is one bldg (the Post Office) on this Commercial lot, but it has its own system on this lot on the northerly side of Rte. 85.

Test pit #3 was successful; #5 was not successful. Town regulations require 2' of natural soil to the SHWT.

Mr. Morrill stated this parcel was used as a staging area during the Rte 108 bridge reconstruction; all natural soil was disturbed—removed, and excavated material like clay were dumped onto this lot. Primary septic system is located in one area of the lot. The 4,000 s.f. Reserve Area only had 1 test pit passed; ZBA would need to approve variance to allow the Reserve Area with only 1 successful Test Pit.

ZBA Mbr Steve Coes questioned 1 test pit for a septic system?

Mr. Morrill explained more current Septic System design technology does not rely on a reserve area, but rather, call for excavation and removal of all material in the failed septic system area, and install a new system in same footprint.

Mike Cuomo at Rockingham Planning has reviewed the plan. The septic design meets state regulations, but Newfields has a more stringent regulation that must apply.

Prior Planning Board minutes indicate they preferred a 2nd plan, which had parking lot at back of the parcel and the bldg situated at the front, and recommended to develop a plan with the fewest waivers required.

Current plan submitted during this ZBA hearing shows bldg meeting setbacks as sited at back of the parcel, and parking lot in front. Plan supplied prior to this Hearing did not show location of Primary septic system. The plan supplied to ZBA during this hearing shows the actual location of primary septic system as well as the Reserve Area in question. Sight distance for the intersection is improved if using this plan. Parking lot in front has better design for run-off to the lower area detention pond. The test pit relief is all the Applicant needs.

Mr. Engle has conditional driveway approval from the State, enough to go forward to the Planning Board.

ZBA Chmn. August asked if waivers are required from abutters regarding this septic location if they may need a well in the future; Mr. Morrill explained no, that there is a mutual buffer. This plan shows at least 75' radius between septic systems and wells; the Applicant's well radius extends perhaps 10 feet over the lot line.

When questioned, the Applicant said no loading dock planned; this bldg better suited for 2 doctors offices.

Mr. Engle has met informally with Planning Board, this submitted plan has exact same square footage as prior plan he discussed with them.

ZBA Mbr Coes discussed that Applicant had been seen years ago, and there were title questions. Also, questioned interpretation if 2 [different use] commercial units can be situated on one lot?

Mr. Engle said that preliminary discussions with Planning Board indicated that they cannot come up with any reasons that 2 buildings cannot be on that lot; question: is there a regulation that says we can't? The Applicants have been unable to find one.

ZBA Mbr Coes and Chmn August agree on a NOTE TO PLANNING BOARD: We need a CLARIFICATION for the Ordinance if 2 bldgs can be on one lot. ZBA Members discussed for some time surrounding this question.

Mr. Morrill explained further that some test pit holes of 6 feet had clay fill with topsoil. Septic system designed to drain down. Their intention is to grade the lot down to the retention pond.

Point of Order: Board members had all read through the application; as no Abutters were present yet (Mr. Mastropietro arrived late) they waived requesting the Applicant to read aloud through his pages of application materials.

Mr. Morrill elaborated the septic system is approx. 300 s.f. in size; as long as land is not a wetland [with Hydric A or B soils] you can put a septic system on it.

ZBA Mbr Jed Rumford questioned whether or not the parcel of land is a conglomerate-consolidation of lots of parcels and whether or not it's a hardship for the owners:

ZBA Mbr Coes also questioned whether these lots were remnants and consolidated over the years?

ZBA Chmn August indicated many notations of State DOT determination that the roadway relocation did not create a subdivided lot, and that there was lot consolidation and acreage reallocation as noted in prior Planning Board minutes.

At 7:50 p.m., the Board began deliberations.

ZBA Mbr. Kent Lawrence questions the 2 bldgs on 1 lot, changes the way he looks at the criteria.

ZBA Mbr Dave Sweet indicates it is not what we can look at in this meeting.

ZBA Chmn August affirmed we are addressing only the request from Ordinances involving test pits and SHWT for their proposed septic system.

ZBA Mbr Lawrence states it unfair if we do not know the 2-bldg question/answer.

Board discussion ensued that the Applicant's aforementioned "precedence" variance approved for Mr. Daley was not about his Space Station Storage business on New Road, but rather the lot behind the Ship-to-Shore Restaurant— for which Mr. Daley came to ZBA to add 2nd bldg on his parcel, which was approved by the ZBA.

Further discussion about lot size in Commercial District is 2 acres.

ZBA Mbr Lawrence returns to the question of test pits with 2 bldgs on one lot?

ZBA Chmn August proposes voting on the Assumption the Applicant has the right to have the 2 bldgs on 1 lot.

The ZBA Board is in agreement that any Vote is contingent on the assumption that the Applicant can have 2 bldgs on 1 [Commercial] lot.

If the Applicant is not allowed 2 bldgs [on 1 Commercial lot] then these votes from the ZBA are Null and Void.

ZBA Mbr Coes asks how to address (A) and (B) of the Ordinance?

ZBA Mbr Lawrence proposes address both at same time.

ZBA Mbr Coes proposes that ZBA consider combining the vote on the premise that both requests for relief (A) and (B) are intertwined. Board is in unanimous agreement regarding vote on requests under same criteria at same time.

Variance Votes by ZBA regarding applicant's relief regarding the Test Pits and Natural Soils/SHWT:

1. Describe unnecessary hardship: Parcel is unique with one bldg across the road having its own septic system, and the remaining acreage supports a second bldg with a separate septic system is reasonable use of this property. The parcel had natural soils removed long before Applicant owned this parcel and that it was "dumped on" [by State DOT during bridge reconstruction]. Hardship exists. Agreed?

AYE: 4 NO: 1

2. Substantial justice is served: Applicant's intent for septic system will be under state guidelines, the parcel will be carefully developed within setbacks. Agreed?

AYE: 5 NO: 0

3. Consistent with spirit and intent of the ordinance? Ordinance addressing 4,000 s.f. Reserve Area could be considered unnecessary since current septic system design technology utilizes same footprint for an in-place replacement in case of failure of primary system. Agreed?

AYE: 5 NO: 0

4. Diminution of value of surrounding properties. No abutters spoke against this application. There seems to be no diminution determined. Agreed?

AYE: 5 NO: 0

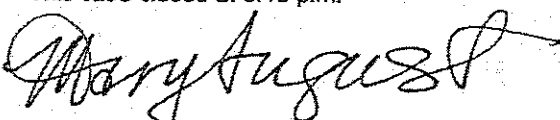
5. Not be contrary to public interest. Allowing the Reserve Area to only have just 1 successful test pit would not pose health or safety risks considering the Applicant indicating current designs call for using Primary Septic System in case of failure. Agreed?

AYE: 4 NO: 1

By these ZBA votes, the variances are approved for just Test Pit #3 as the 1 successful test pit in the Reserve Area, and approving relief from Depth of Natural Soils to the SHWT, as submitted.

The Board reiterates that these votes are contingent on the clarification that 2 bldgs can be allowed on 1 lot in the Commercial District.

This case closed at 8:45 p.m.



Mary August, Chmn.



ROCKINGHAM COUNTY CONSERVATION DISTRICT

110 North Road
Brentwood, NH 03833-6614

TEL 603-679-2790 FAX 603-679-2860
www.rockinghamccd.org

2 March 2011

Mary August, Chair, Zoning Board of Adjustment
Town of Newfields
65 Main Street
Newfields, NH 03856

RE: Case 11-2-23-1
Cedar Island Ledge Property Management LLC
Tax map/lot: 202-8.23
RCCD # NF202-8.23-L11

Dear Ms. August;

I have read the ZBA minutes of 23 February 2011 regarding the above referenced property. From the minutes it is clear the ZBA was under the impression that test pit three, over which the disposal area is proposed, meets the town soil requirements for wastewater disposal; it does not. None of the test pits meet town requirements, as stated in my report dated 22 November 2004 (attached).

Zoning 10.2.2.2.1.b requires two feet of *natural soil* above the seasonal high water table. Test pit three found the seasonal high water table 44 inches below the surface, which includes 28 inches of fill: 44" total - 28" fill = 16" natural soil above the seasonal high water table.

The ZBA was correct in describing the two requests for relief as intertwined. Zoning 10.2.2.2.1.a requires a 4,000 square foot area of suitable soils, which can not be met on this lot for the reasons described above.

This is brought to your attention for whatever action the ZBA determines is appropriate. The applicant has a wastewater disposal system design at our office, which we will not act on until we receive further direction from you.

Sincerely,

Michael Cuomo
NH Certified Soil Scientist #6
NH Certified Wetland Scientist #4
NH Designer #788

Cynthia W. Smith
Chairman, Board of Directors

Copy to: Wayne Morrill, Jones and Beach Engineers, Inc.

Town of Newfields
Test Pit Report

22 November 2004

Bill Davis
Routes 108 and 85
Tax map 202, lots 8.25

On this date I witnessed six test pits on this vacant property for a proposed commercial use. The test pit data was recorded by Wayne Morrill of Jones and Beach Engineers, Inc.

None of the test pits meet the local soil requirement of at least 24 inches of natural soil above the estimated seasonal high water table.

Test pit one found 42 inches of unsuitable fill and evidence of the seasonal high water table at 50 inches.

Test pit two found 66 inches of unsuitable fill over the natural soil. The depth to the seasonal high water table could not be determined because of the soil disturbance.

Test pit three found 28 inches of unsuitable fill and evidence of the seasonal high water table at 44 inches.

Test pit four found 16 inches of unsuitable fill and evidence of the seasonal high water table at 29 inches.

Test pit five found 14 inches of unsuitable fill and evidence of the seasonal high water table at 30 inches.

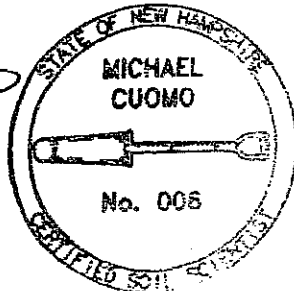
Test pit six found 15 inches of unsuitable fill and evidence of the seasonal high water table at 31 inches.

No bedrock was found in any of the test pits.

A summary of the test pit data is attached.

Michael Cuomo

Michael Cuomo
NH Soil Scientist #006



Donna Newman

From: Leonard Lord [rccdlal@comcast.net]
Sent: Monday, March 21, 2011 8:05 AM
To: Selectmen@NewfieldsNH.gov
Cc: diy@moorecast.com; tomhayward@newfieldsnh.gov; jbe@jonesandbeach.com
Subject: ZBA Case 11-2-23-1, Cedar Island Ledge Property Management LLC
Importance: High

Dear Selectmen-

At her request, RCCD has forwarded a letter we prepared to Ms. August, Chair of the ZBA, in reference to a ruling on a variance request for the referenced project. I have also included a copy of the letter presented to the ZBA by Jones and Beach in response to our letter.

There appears to be a misunderstanding by the applicant with regard to Test Pit 3, which RCCD witnessed in November 2004. In our letter at that time we noted that six test pits were witnessed and none of them met local requirements. Test Pit #3, however, was presented to the ZBA by the applicant as a passing test pit. RCCD does not object to using this test pit as we believe there are no better soils available on the site and that a septic system can be properly designed for the area. Utilizing this test pit would require obtaining a variance, however, which has not yet been done. The applicant has provided a septic system design for RCCD to review and approve, which we are holding until we get clarification from the Town on how to proceed.

Please let me know if you have any questions.

Best-
Lenny Lord

Leonard A Lord, PhD, CSS, CWS
District Manager
Rockingham County Conservation District
110 North Road
Brentwood, NH 03833-6614
Tel. (603) 679-2790 Fax (603) 679-2860

3/21/2011

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March 9, 2011

Mary August, Chair, Zoning Board of Adjustment
Town of Newfields
65 Main Street
Newfields, NH 03856

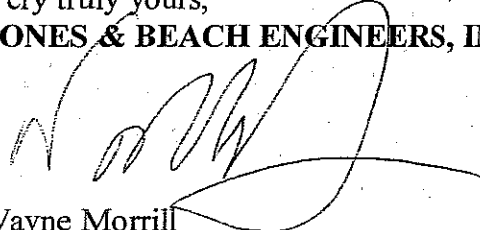
**RE: Case No. 11-2-23-1
Cedar Island Ledge Property Management LLC
Route 85, Newfields, NH
Tax Map 202, Lot 8.23
JBE Project No. 04175**

Dear Ms. August,

We received a letter from Mike Cuomo, Rockingham County Conservation District, in reference to the zoning case listed above. Two zoning relief variances were requested regarding test pits and natural soil depth to seasonal high water table (SHWT), Article 10.2.2.2.1(A) and Article 10.2.2.2.2(B) for this case. We represented to the Board that test pit #3 was a passing test hole, due to the native topsoil and other materials that were existing in the test hole investigations. Unlike the other test holes on the lot that had fill completely up to the existing ground elevation, test pit #3 was performed next to the only remaining trees on the lot and had more natural soil characteristics than the others that were performed. In no way did we intend to mislead the Board about test pit results. All of our test pit results were attached to the Zoning Board of Adjustment Application and we requested relief from the two zoning articles that were presented, which was granted.

If you have any questions, or need additional information, please contact our office. Thank you very much for your time.

Very truly yours,
JONES & BEACH ENGINEERS, INC.



Wayne Morrill
Vice President

cc: Mike Cuomo, Rockingham County Conservation District
Kyle Engle, Cedar Island Property Management, LLC